Memorandum in Support of the Application of Zions First National Bank to Commence New Activities Through an Operating Subsidiary

I. Introduction

Zions First National Bank ("Zions") hereby submits this memorandum in support of its application (the "Application") for approval for its operating subsidiary, Zions Investment Securities, Inc. ("Zions Investment Securities"), to underwrite, deal in and invest in securities of states and political subdivisions. These securities would include: (i) obligations defined by the Comptroller of the Currency (the "Comptroller") as general obligations of states and political subdivisions; and (ii) other obligations which do not qualify under the Comptroller's current definitions as general obligations ("Revenue Bonds").

As set forth below, Zions believes that the Comptroller has the legal authority to approve the Application. Moreover, the approval would produce substantial benefits for: municipalities and other political subdivisions -- in the form of increased access to and lower costs for financing; the public -- in the form of improved municipal services and lower taxes; and the banking industry -- in the form of increased and diversified sources of revenue without increased risk. Approval would advance the objectives of the Community Reinvestment Act by enabling banks to provide substantial additional sources of financing for local communities.

II. Legal Analysis

A. Overview

There is, of course, no question as to the ability of an operating subsidiary to underwrite, deal in and invest in obligations which are currently authorized for a national bank. Likewise, because a national bank can invest in "investment securities", all or virtually all obligations of political subdivisions are eligible for investment by an operating subsidiary.*

In addition, an operating subsidiary of a national bank also has the authority to underwrite and deal in Revenue Bonds although a national bank does not. First, this activity qualifies as incidental to the business of banking. See Nationsbank v. Variable Annuity Life Ins. Co., 115 S. Ct. 810, 814 (1995) ("VALIC").

Second, underwriting and dealing by an operating subsidiary would not be barred by Section 16 of the Glass-Steagall Act, which applies only to securities activities conducted directly by a national bank. In Section 20 of the Glass-Steagall Act, which is the Glass-Steagall provision applicable to bank affiliates, Congress established a more

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* Zions also contends that full faith and credit obligations of states and political subdivisions ("FFC Securities") can be underwritten and dealt in by a national bank because they constitute "general obligations" within the meaning of Section 16 of the Glass-Steagall Act, as codified at 12 U.S.C. § 24 (Seventh). Although the status of FFC Securities as general obligations would permit Zions Investment Securities to underwrite and deal in FFC Securities, Zions concedes that the Comptroller does not currently accept this position and will not advance the argument in this memorandum.

liberal scheme for underwriting and dealing by a bank affiliate.

Thus, the purpose underlying the restrictions in Section 16 of the Glass-Steagall Act will not be frustrated by permitting a national bank operating subsidiary, such as Zions Investment Securities, to engage in underwriting and dealing in Revenue Bonds.

B. Analysis of Operating Subsidiaries' Authority to Underwrite and Deal in Revenue Bonds

Under Part 5 of the Comptroller's regulations, an operating subsidiary of a national bank may, with the Comptroller's approval, conduct activities that are incidental to the business of banking even if the activities are not permissible for the national bank itself because of a specific statutory restriction. 12 C.F.R. § 5.34(d)(1) & (f); 61 Fed. Reg. 60342 (Nov. 27, 1996). For the reasons set forth below, Zions believes that an operating subsidiary can and should be permitted to underwrite and deal in Revenue Bonds.

1. Underwriting and Dealing Is an Incidental Power

As the Supreme Court recently found in VALIC, securities underwriting and dealing must constitute incidental powers of national banks. VALIC, 115 S. Ct. at 814. The limitation on purchasing and selling securities added by Congress in 1933 to Section 24 (Seventh) "makes sense only if banks already had authority to deal in securities, authority presumably encompassed within the 'business of banking' language which dates from 1863." Id.

(emphasis added). Moreover, the Supreme Court recognized in VALIC that intermediation of financial instruments is an incidental power of banks, id. at 814-815; that is precisely what underwriting and dealing in securities involve.*

The legislative history of the Glass-Steagall Act makes clear that underwriting and dealing in securities were activities engaged in by national banks prior to the adoption of that statute. For example, the House Report noted that banks would "hereafter" be limited in their ability to purchase and sell investment securities for their own account. See H.R. Rep. No. 150, 73d Cong., 1st Sess. 3 (1933).

Confirmation that the "incidental powers" clause encompasses underwriting and dealing activities is provided by the McFadden Act language dealing with these activities. The McFadden Act added the following proviso:

> ". . . the business of buying and selling investment securities shall hereafter be limited to buying and selling without recourse marketable obligations evidencing indebtedness . . . ."

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* OCC Interpretive Letter No. 494 (Dec. 28, 1989), reprinted in [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,083, at 71,199:

> "The participation of banks as principal in the financial trading markets is itself an aspect of the primary function of banks as financial intermediaries. The role of a bank is to act as an intermediary, a 'dealer' in capital, facilitating the flow of money and credit among different parts of the economy."

McFadden Act, ch. 191, § 2, 44 Stat. at 1226 (emphasis added). This statement demonstrates that national banks previously had authority to engage in underwriting and dealing; that authority must have been the incidental powers clause. See VALIC, 115 S. Ct. at 814 (McFadden Act "limited an activity already part of the business national banks did").

The legislative history of the McFadden Act provides additional support for this conclusion. The House Report relating to the bill that became the McFadden Act noted:

> "It is a matter of common knowledge that national banks have been engaged in the investment-securities business . . . for a number of years. In this they have proceeded under their incidental corporate powers to conduct the banking business. Section 2(b) recognizes this situation but declares a public policy with reference thereto and thereby regulates these activities."*

The Report went on to note that the proviso added to Section 24 (Seventh)

> "recognizes and affirms the existence of a type of business which national banks are now conducting under their incidental charter powers. They may be said to liberalize, in that they confirm the conduct of this character of business; on the other hand, they are restrictive in that the business is confined to definite limits by law."**

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* H.R. Rep. No. 83, 69th Cong., 1st Sess. 2 (1926); Cong. Rec. 2828 (Jan. 27, 1926) (emphasis added).

** Id. at 3 (emphasis added); Cong. Rec. 2828 (Jan. 27, (continued...)

Additional language in the Report is to the same effect.

> "The first proviso referred to recognizes the right of national banks to continue to engage in the business of buying and selling investment securities . . . . In this connection it may be noted that this is a business regularly carried on by State banks and trust companies and has been engaged in by national banks for a number of years. The national banks hold today in the neighborhood of $6,000,000,000 of investment securities. The effect of this provision, therefore, is primarily regulative."

Id. at 3-4.

Similarly, Representative McFadden, in testifying before the Senate subcommittee charged with consideration of the bill that became the McFadden Act, stated:

> "As to the investment securities provisions in section 2(b) it has been said that we are permitting national banks to engage in a new business without proper safeguards. I shall not consume any time in impeaching the sincerity of this criticism for I am sure your committee well knows that the national banks have for many years been engaged in the business of buying and selling investment securities without any restri-ctions whatsoever except such credit criticisms as may be made by the comptroller and such limitations as the board of directors themselves may see fit to make.

**(...continued)
1926); see also Hearings Before the Senate Comm. on Banking and Currency on S. 3316 and H.R. 8887, 68th Cong., 2d Sess. 110-11 (1925) (A witness, Mr. Marlatt, noted "national banks in Cleveland . . . have dealt in such securities for years. They simply wish to legalize what has been done . . . .").

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> Modern banking requires the conduct of an investment securities business and the purpose of section 2(b) of this bill is to restrict it to proper and reasonable limits both as to the aggregate amount of any issue which may be held and as to the character of securities that may be dealt in. The section is, therefore, definitive and restrictive. The existing law neither defines nor restricts."

Hearings Before a Subcomm. of the Senate Comm. on Banking and Currency on S. 1782 and H.R. 2, 69th Cong., 1st Sess. 22 (1926).

Further support is provided by the legislative history of a 1924 bill. A limitation on national banks' securities powers was proposed in that bill as an exception (Exception No. 9) to the lending limit statute.

> "Exception No. 9 is new language. National banks at the present time are engaged to a greater or lesser extent in buying and selling investment securities. There is no express power given in the national banking laws authorizing the conduct of this character of business. Nevertheless this is a form of service demanded by banks and it has come to be recognized as a legitimate banking service."

S. Rep. No. 666, 68th Cong., 1st Sess. 6 (1924). Accordingly, underwriting and dealing in securities were part of the "business of banking" well before the McFadden Act and the Glass-Steagall Act were adopted.

Confirmation that national banks were actively engaged in securities underwriting and dealing activities prior to 1933 is provided by a number of judicial decisions

and secondary sources. See, e.g., First National Bank of North Bennington v. Bennington, 9 F. Cas. 97 (C.C.D. Vt. 1879) (suit brought by national bank to enforce interest coupons issued by municipality); Newport National Bank v. Newport Board of Education, 70 S.W. 186 (1902) (suit brought by national bank for breach of contract to purchase municipal bonds; found that power to negotiate evidences of debt includes power to deal in municipal bonds); Comptroller of the Currency Ann. Rep. 78 (1926); Comptroller of the Currency Ann. Rep. 12 (1924) (recommending amendment of Section 24 of Federal Reserve Act to permit national bank to buy and sell investment securities, which "would make very little change in existing practice, since a great number of national banks now buy and sell investment securities and the office of the comptroller has raised no objection because this has become a recognized service which a bank must render"); Comptroller of the Currency Ann. Rep. 8-9 (1909); W.N. Peach, The Securities Affiliates of National Banks 11-20 (1941); V. Carosso, Investment Banking in America: A History 97-98 (1970).

The conclusion that underwriting and dealing are incidental powers of national banks is further supported by a review of the three standards under which courts have traditionally analyzed the incidental powers issue.

First, courts have recognized that an activity traditionally performed, or functionally similar to an activity traditionally performed, by banks is incidental to the business of banking. See, e.g., VALIC, 115 S. Ct. at 815 (approving bank annuity sales on the grounds that they are "essentially instruments of the kind" banks traditionally have been permitted to sell); Colorado Nat'l

Bank v. Bedford, 310 U.S. 41, 49 (1940) ("national banks do and for many years have carried on a safe deposit business"); American Ins. Ass'n, 865 F.2d at 282 (municipal bond insurance is "functionally equivalent to the issuance of a standby letter of credit, a device long recognized as within the business of banking").

This first test is easily satisfied. As the foregoing discussion makes clear, banks have traditionally engaged in underwriting and dealing in all types of securities (including municipal securities) prior to 1933. Even after 1933, national banks have continued to underwrite and deal in a number of securities, including many municipal obligations.

Second, courts have focused on whether the activity is convenient or useful to the business of the bank. See, e.g., Franklin National Bank v. New York, 347 U.S. 373, 377 (1954) (power to advertise services was permissible as incidental power because "modern competition for business finds advertising one of the most usual and useful" practices); Clement National Bank v. Vermont, 231 U.S. 120, 157 (1913) (bank permitted to pay state taxes on depositors' accounts to "promote the convenience of its business"); Merchants' Bank v. State Bank, 77 U.S. 604, 648 (1871) ("the practice of certifying checks has grown out of the business needs of the country"); M & M Leasing, 563 F.2d at 1382 (leasing of personal property is permissible because it is "convenient and useful" to the banking business).

The ability to underwrite and deal in a broader range of political subdivision securities would be both

convenient and useful to Zions in a number of respects.* In the first instance, this authority would enable Zions to respond to the evolution of the municipal bond market. Although in 1934 the market consisted almost exclusively of general obligations of entities with taxing authority, by 1993 other municipal bonds accounted for over 60 percent of new issues. See The Bond Buyer's 1993 Yearbook 21 (1993). Accordingly, Zions would gain additional sources of revenue from activities that constitute a logical and modest extension of the municipal financing activities it currently conducts.

In addition, the power to underwrite and deal in the full range of political subdivision securities would allow Zions to respond to the growing demand on the part of its municipal customers for a broader range of financing services. With a significant number of investment banks reducing or eliminating their municipal financing operations, there has been a reduction of competition in what was already a concentrated market. Even 10 years ago, it was estimated that permitting banks to underwrite municipal revenue bonds could have saved State and local governments as much as $480 million per year. Senate Comm. on Banking, Housing and Urban Affairs, Financial Modernization Act of 1988, S. Rep. No. 100-305, 100th Cong., 2d Sess. 15 (1988). Today, many political subdivisions find they cannot gain access to public financing, especially for smaller projects, or access only at a very high cost. The current restrictions prevent Zions from responding to municipalities' financing needs, although Zions' regional

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* These benefits are discussed in more detail in Part III of this memorandum.

presence and familiarity with many of the local clients enable it to deliver these services more efficiently and at a lower cost.

The third factor, recognized by both the courts and the Comptroller, is the impact of a particular activity on bank safety and soundness. See e.g. Aotwin v. Atlas Exchange Nat'l Bank, 295 U.S. 209, 214 (1935) (purpose of the National Bank Act is "to protect [banks'] depositors and stockholders and the public from the hazards of contingent liabilities"); First Nat'l Bank v. Converse, 200 U.S. 425, 439 (1906) (national bank may not "engage in or promote a purely speculative business or adventure"); Arnold Tours, Inc. v. Camp, 408 F.2d 1147, 1151 (1st Cir. 1969), vacated on other grounds, 400 U.S. 45, 46 (1970) (powers of banks in Section 24 (Seventh) "were for the purpose of insuring the stability, liquidity, and safety of the banks"); Citibank, N.A., OCC Interpretive Letter No. 652 (Sep. 13, 1994), 1994 OCC Ltr. LEXIS 113 *12 ("as with any activity conducted by a bank, [the proposed activity] must be carried out in accordance with safe and sound banking principles").

Underwriting and dealing in a broader range of political subdivision obligations would not entail a different type or degree of risk than the types of bonds that national banks already are expressly permitted to underwrite and deal in. These include not only general obligation bonds, but also housing, university (including hospitals with a teaching nexus) and dormitory revenue bonds.

Moreover, an activity would involve less risk if conducted in an operating subsidiary rather than directly in

a national bank. In the latter case, the national bank would have liability to the full extent of the losses incurred in conducting the activity. In the former case, the national bank's loss would be limited to its investment in the operating subsidiary.*

This same analysis has been employed for many years by the Comptroller in permitting operating subsidiaries to act as general partners in partnerships. In 1906, the Supreme Court had concluded that national banks could not act as general partners because of the unlimited nature of the exposure of a general partner to losses at the partnership level. Merchants' National Bank v. Wehrmann, 202 U.S. 295 (1906). The Comptroller has, however, permitted operating subsidiaries of national banks to act as general partners because the risk of loss is limited by the corporate structure of the operating subsidiary. See, e.g., Conditional Approval No. 150 (Aug. 8, 1994), 1994 OCC Ltr. LEXIS 108 (operating subsidiary to act as general partner in partnership formed to issue asset-backed securities); OCC Interpretive Letter No. 541 (Feb. 6, 1991), 1991 OCC Ltr. LEXIS 9 (approving operating subsidiary to act as general partner in commodity pool); OCC Interpretive Letter No. 423 (Apr. 11, 1988), [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,647 (approving operating subsidiary to act as managing general partner of limited partnership formed to invest in real estate mortgage-related assets); OCC Interpretive Letter No. 289 (May 15, 1984), [1983-1984

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* Moreover, under Part 5 of the Comptroller's regulations, Zions' investment in the operating subsidiary must be deducted from its capital. Notwithstanding this deduction, Zions must and will continue to be well capitalized.

Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,453 (approving operating subsidiary to act as general partner of partnership formed to establish ATMs); cf. OCC Interpretive Letter No. 645 (Apr. 29, 1994), 1994 OCC Ltr. LEXIS 84 (approving formation of limited liability company because of limited risk to bank).

Moreover, any risk that could be posed to Zions by the operating subsidiary's activities under a "piercing the corporate veil" or similar doctrine is substantially mitigated by the corporate requirements of 12 C.F.R. Section 5.34(f)(2), and any such risk to the Bank Insurance Fund is eliminated by the provisions of the Federal Deposit Insurance Act providing for depositor preference.* A creditor of an operating subsidiary would not be a "depositor" of the bank. Therefore, even if the creditor's claim were treated as a claim against the bank for some reason, its claim would be subordinate to the claims of all depositors and the Federal Deposit Insurance Corporation as subrogee of depositor claims.

2. Restrictions in Section 16 Do Not Apply to an Operating Subsidiary

Because underwriting and dealing are incidental powers, the only remaining questions are whether the Section 16 prohibitions on these activities when conducted directly in a national bank apply as well to an operating subsidiary and, even if not, "whether it would frustrate the purpose underlying [Section 16] to permit a subsidiary of [a national bank] to engage in [this] activity." 61 Fed. Reg. 60342, 60352 (1996).

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* 12 U.S.C. § 1821(d)(11).

In Sections 16, 5 and 21 of the Glass-Steagall Act, Congress prohibited national and state banks from underwriting and dealing in certain securities because of perceived risk to banks from those activities. These prohibitions did not, however, apply by their terms to subsidiaries or other affiliates of national banks. This limitation of the statutory prohibition is the plain meaning of the statutory language and, insofar as there is a question of statutory interpretation, that plain meaning must be honored absent compelling evidence of a different Congressional intent. Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842 (1984).

Indeed, the compelling evidence here is fully consistent with the plain language. The Glass-Steagall Act prohibitions on securities activities conducted directly by banks were not extended to subsidiaries and other affiliates as a result of inadvertence or omission, but as part of a carefully conceived statutory framework. A different set of rules (Sections 20 and 32) was applied to subsidiaries and affiliates of national and state member banks.

In Section 20, Congress adopted a specific statutory arrangement that dealt with the securities activities of affiliates of national and state member banks. Section 20 enabled member banks to have affiliates engaged in underwriting and dealing in securities of all types to a limited extent (the "not principally engaged test").* The

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* Zions Investment Securities is subject to Section 20 and therefore the "not principally engaged test". In order to minimize any dispute over the interpretation

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term “affiliate” is defined in Section 2(b) to include subsidiaries of banks. It would have been nonsensical for “affiliates” to be defined to include bank subsidiaries if such subsidiaries were totally barred. It likewise would have been nonsensical for Congress to have authorized subsidiaries of member banks to underwrite and deal in all securities to a limited extent in Section 20 if member bank subsidiaries could not engage in such activities to any extent under Section 16.

In other words, the inapplicability of the Section 16 limitations to operating subsidiaries is not a function of negative inference or implication. Congress did not merely fail to act with respect to operating subsidiaries; it acted directly and explicitly with respect to the securities activities of subsidiaries of national banks and state member banks. The statutory language is clear in creating different rules for activities conducted directly in a bank and activities conducted through a subsidiary, and that dual approach must be honored by the courts. Even if the language were less clear, the two sections must be read in a way so that Section 20 is not rendered superfluous or erroneous. Board of Governors of the Federal Reserve System v. Investment Company Institute, 450 U.S. 46, 62-63 (1981); Securities Industry

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*(...continued)
of this test, Zions Investment Securities will agree not to exceed the Federal Reserve’s 25 percent of revenues test without prior notification of at least 30 days to the Comptroller. Zions believes that the correct analysis of this test is that previously set forth by the Comptroller. 1987 W.L. 287022, 3 OCC Q.J. 61 (OCC Inter. Ltr. 383)(Sept., 1987).

Association v. Board of Governors of the Federal Reserve System, 807 F.2d 1052, 1058 (D.C. Cir. 1986).

Moreover, such a distinction is logical. As discussed above, there is less risk to a bank, and therefore less of a safety and soundness concern, when an activity is conducted in a subsidiary rather than directly in the bank.

In summary, Congress carefully constructed a statutory scheme for securities activities of national and state member banks. The bank itself could underwrite and deal in only certain limited categories of securities (Sections 16 and 5). A subsidiary of a national or state member bank could underwrite and deal in those securities and, to a limited extent, in other securities. Accordingly, the securities activities of a subsidiary of a national bank are not subject to the rules applicable to the national bank itself, but to the rules that Congress specifically established for such a subsidiary.

As has been recognized in a closely analogous case, it is impermissible for the courts to attempt to override this Congressionally-established statutory scheme. The restrictions imposed on banks themselves cannot be imposed on their subsidiaries. Investment Company Institute v. Federal Deposit Insurance Corp., 606 F. Supp. 683, 686 (D.D.C. 1985), cert. denied, 484 U.S. 847 (1987).* This case held that Section 21 of the Glass-Steagall Act

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* See also FDIC Statement of Policy on the Applicability of the Glass-Steagall Act to Securities Activities of Subsidiaries of Insured Nonmember Banks, PR-72-82 (Sep. 1, 1982), reprinted in Fed. Banking L. Rep. (CCH) ¶ 52-801.

does not bar securities activities in a subsidiary of a nonmember state bank even though it bars such activities in the bank itself. Likewise, the restrictions in Section 16 on securities activities conducted by a national bank do not apply to the subsidiary of that bank. The subsidiary's activities are instead governed by Section 20.*

When the Comptroller recently amended Part 5 of its regulations, he noted that in considering an application to engage in an activity that is part of or incidental to the business of banking but prohibited to a national bank he would consider whether permitting the activity to be conducted by an operating subsidiary would frustrate the purposes of the prohibiting law. 61 Fed. Reg. at 60352. The preceding analysis demonstrates that in fact approving the Application would be completely consistent with the purposes of the Glass-Steagall Act.

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* This conclusion is supported by the Comptroller's analysis in adopting the recent revisions to Part 5. See 61 Fed. Reg. 60342, 60350-54 (1996); Legal Opinion from Julie L. Williams, Chief Counsel, to the Comptroller (Nov. 18, 1996). We do not believe that the Comptroller's determination in adopting the Part 5 revisions and approving this Application did or would conflict with the Comptroller's prior precedent, but even if it did, as the Supreme Court recently held in VALIC, "[A]ny change in the Comptroller's position might reduce, but would not eliminate, the deference we owe his reasoned determinations." VALIC, 115 S. Ct. at 817. See also Clark-Cowlitz Joint Operating Agency v. Federal Energy Regulatory Commission, 826 F.2d 1074 (D.C. Cir. 1987) (en banc), cert. denied, 485 U.S. 913 (1988), where the Circuit Court addressed "the fundamental question as to an agency's ability to change its mind about the law and to act upon its new interpretation." Id. at 1078.

III. Public Policy Considerations

The enhanced ability of national banks to underwrite and deal in a wider range of obligations of political subdivisions would produce substantial public benefits. Municipalities and other political subdivisions should gain a significant reduction of financing costs from the additional competition that banks would provide -- a benefit which Congress was seeking to ensure when it adopted the general obligations exemptions in Section 16. This competition would be particularly beneficial for smaller communities, such as those located in the state of Utah and the other states where Zions conducts its current underwriting activity, which are served by few underwriters and, in some cases, none. The general public would benefit from the lower taxes and improved services which lower financing costs and increased access to financing should yield. Banks would benefit from a diversification of revenues and an added source of income consistent with safety and soundness considerations.

A. Political Subdivisions

At the present time, banks are unable to compete for over 60 percent of the obligations issued by political subdivisions, amounting to approximately $100 billion per year. This restraint on competition significantly increases the cost of financing for political subdivisions. Ten years ago it was estimated:

> "[P]ermitting banks to underwrite municipal revenue bonds could have saved State and local governments as much as $480 million in 1986."

Senate Committee on Banking, Housing and Urban Affairs, Financial Modernization Act of 1988, S. Rep. No. 100-305, 100th Cong., 2d Sess. 15 (1988).

Because the volume of these underwritings has increased by about two times since 1986, it is reasonable to assume that the annual cost savings today would amount to $1.0 billion. This figure is confirmed by another analysis. The Public Securities Association estimates that approximately 70% of the $1.302 trillion of outstanding municipal securities (or $0.9 trillion) are non-GO bonds. If the increased competition reduced interest costs by only 10 basis points, the annual savings would again be about $0.9 billion.

The need for additional competition has become particularly acute in recent years because the number of competitors has sharply declined. Since the beginning of 1995, CS First Boston, Donaldson, Lufkin & Jenrette, Lazard Frères and Chemical Securities have all eliminated their municipal finance businesses. Other major firms have previously either left the business (Salomon), been largely liquidated (Kidder Peabody) or substantially reduced their operations (Dean Witter).

The lack of competition is particularly harmful to smaller communities that propose to issue only relatively small amounts of securities. Many of the larger money center and regional underwriting firms apparently do not consider these small issues to be profitable and do not bid on them. The result is a highly concentrated market and artificially high borrowing costs. Indeed, in the case of

the smallest issues, it may not be possible to obtain any underwriting bids at all.

Zions would be uniquely qualified to serve these smaller communities and, more generally, communities throughout the regions it serves. Zions already has extensive local contacts, familiarity and relationships with state and local government authorities in the states of Utah, Nevada, Arizona and Idaho, among others, and a demonstrated commitment to its communities, large and small.

In addition to the positive impact of competition on both availability and costs of financing for political subdivisions, Zions' participation in a broader range of municipal underwriting would reduce financing costs in a number of other ways. Due to Zions' regional presence and proximity to and familiarity with the communities, it generally is able to deliver services at a lower cost. Travel and other overhead are reduced, and Zions' knowledge of the clients is considerably greater than that of investment banking firms located outside Zions' primary region of operations.

B. Safety and Soundness Considerations

Increased underwriting powers for municipal obligations will enable Zions to increase and diversify its earnings base without a concomitant increase in risk. The additional bonds that could be underwritten would not involve any more risk than do those securities, such as housing, university and dormitory revenue bonds, that are currently expressly eligible for bank underwriting. Moreover, Zions already makes loans for its own account to

the state and municipal authorities, so the risk is not new or unfamiliar.

The entry into full-scale Revenue Bond underwriting can be undertaken with the support of the very strong capital positions of Zions and its parent holding company.

	Shareholder's and Shareholders' Equity to Total Assets	**Risk-Based Capital Ratios**	
	(At December 31, 1996)		
		Tier 1 Capital	*Total Capital*
Zions First National Bank	6.95%	11.36%	19.47%
Zions Bancorporation	7.25%	14.38%	18.31%

After giving effect to the deductions required by Part 5, these ratios will remain strong, and both Zions and Zions Bancorporation will remain well capitalized:

	Pro-Forma Shareholder's and Shareholders' Equity to Total Assets	**Pro-Forma Risk-Based Capital Ratios**	
	(At December 31, 1996)		
		Tier 1 Capital	*Total Capital*
Zions First National Bank	6.93%	11.34%	19.43%
Zions Bancorporation	7.23%	14.37%	18.28%

Moreover, Zions has substantial expertise in municipal bond underwriting and marketing of all kinds.

C. Incremental Extension

The proposed underwriting and dealing activities represent merely an incremental extension of the underwriting and dealing activities currently conducted by Zions. The individuals who supervise Zions' current underwriting and dealing activities have substantial expertise in such activities, and Zions has recently experienced significant growth in the level of such activities. In accordance with the Comptroller's regulations, Zions presently purchases general obligation bonds, utility revenue bonds and other eligible revenue bonds for its own portfolio. Zions has underwritten municipal bonds in its capital markets department since the creation of that department in 1975.

Over the past four years, Zions has experienced significant growth in its general obligation underwriting and dealing activity. Although Zions has participated in underwritings in various states throughout the nation, it has concentrated its growth in the central and southwest regions of the United States. In 1993, Zions was lead manager for only one competitive bid issue, but by 1996 that number had grown to 38. Those 38 issues represented a total par amount of $3,764,947,000 ($15,185,000 in 1993), and in 1996 Zions participated in competitive bid issues with a total par amount of $6,066,537,000.

Zions has recently been an active underwriter of municipal bonds, particularly in smaller states such as Utah and New Mexico, but also some larger states such as Texas.

In 1996, Zions was lead or co-manager for 20 issues in the state of Utah alone, with a total par amount of $318,827,000, and for 20 issues in the state of Texas, with a total par amount of $3,196,465,000. Zions was also lead or co-manager in 16 issues in the states of Idaho, Kansas and New Mexico combined, and lead or co-manager in an additional 24 issues in various other states. Excluding certain short-term securities and remarketed securities, Zions ranked seventh in the state of Utah by total par amount in 1996 ($28.4 million), seventh in the state of Utah in 1995 ($38.1 million) and tenth in the state of Idaho in 1996 ($2.5 million).

Zions employs individuals who have significant levels of experience in underwriting and pricing bonds, and intends to continue to capitalize on their talents in underwriting general obligation and other eligible securities. These same individuals who have overseen the significant growth in the level of Zions' underwriting activities will also supervise Zions Investment Securities' underwriting and dealing activity in Revenue Bonds (and in general obligations, if any). They will bring to Zions Investment Securities the same expertise and professionalism in underwriting that they currently bring to Zions. Zions and Zions Investment Securities will, nevertheless, comply with all requirements mandated by 12 C.F.R. Section 5.34 for a separation of the corporate activities of Zions and Zions Investment Securities.

In addition, in the approximately 21 years that Zions has been underwriting and dealing in general obligation securities and eligible revenue bonds, Zions has managed to cultivate a substantial institutional clientele.

Zions Investment Securities, on the other hand, employs a staff of 34 experienced sales and trading professionals who operate throughout Zions' branch network, marketing their products to a retail clientele. These dual marketing structures, one focused on retail clients and one on institutional clients, can easily and efficiently accommodate Zions Investment Securities' underwriting and dealing in all forms of Revenue Bonds. Zions Investment Securities will underwrite issuances of Revenue Bonds, and Zions, solely as agent for its customers, will offer such securities to those institutional customers.* Zions and Zions Investment Securities thereby will extend their financing services to more municipalities, offer their clients a broader selection of investment products and mutually benefit from an efficient allocation of their staffing resources.

The size and number of issues, the range of clients, and the experience and professionalism of Zions' capital markets department demonstrate the commitment of Zions to all municipal issuers, regardless of size, throughout its region of operations, and its extensive expertise. The proposed underwriting activities of Zions Investment Securities will merely extend such commitment to a greater number of municipal issuers.

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* In all dealings with the public, Zions will ensure that it fully discloses that it is acting solely as agent and that Zions Investment Securities is the underwriter of (or dealer in, as the case may be) the Revenue Bonds, not Zions.

IV. Community Reinvestment Act

As the regulations of the Comptroller and its sister agencies recognize, the underwriting of and investment in obligations of states and local governments can be an important element in fulfilling banks' responsibilities under the Community Reinvestment Act. Approval of this Application will enhance the ability of Zions, and subsequently other banks, to fulfill this obligation by providing additional, more efficient and less costly financing for local communities. In particular, smaller communities and those with a more limited economic base will be able to access a vital form of modern finance.

V. Conclusion

Approval of the Application would lead to a more competitive environment for municipal financing, and thereby provide financial relief for states and political subdivisions and improved services and lower taxes for the public. National banks would gain a complementary source of revenue without additional risk, as well as an enhanced ability to fulfill their obligations under the Community Reinvestment Act to provide financing for local communities.

Finally, there is binding Supreme Court precedent that underwriting and dealing is an incidental power of national banks. The structure of the Glass-Steagall Act, which clearly distinguishes between the powers of banks and the powers of bank affiliates, enables an operating subsidiary, such as Zions Investment Securities, to exercise this incidental power to the extent permitted by Section 20.